

1 to draw that conclusion if it's erroneous.

2 WITNESS: I don't want to present that conclusion,  
3 either.

4 JUDGE LUTON: Yeah. All right, let's go ahead.

5 BY MR. SHOOK:

6 Q Mr. Meyers, moving on to the next page, the  
7 paragraph that begins, "The final problem." If you would,  
8 please, take a look at the third sentence where it says, "The  
9 proper tower has been located and is being shipped"?

10 A I believe that that was based on the contact that I  
11 had with the Antenna and Tower Service, Incorporated of, of  
12 Sturgeon, Mississippi, and at the time that I put that in  
13 there I believed that that's the, the arrangement that we were  
14 going to make.

15 Q You were going to make. Isn't it a fact that as of  
16 May 26, 1988, the tower, in fact, was not being shipped?

17 A It was not but I had every reason to believe that we  
18 were, were going to make use of that company.

19 Q The only way you could make use of that company  
20 would be to sign and send money to the Antenna --

21 A That's correct.

22 Q -- people, would it not?

23 A That's correct.

24 Q And you had not done so, had you?

25 A I had not done so at that time, but again in

1 telephone conversations with the gentleman there I had reason  
2 to believe that we were going to make that commitment. I had  
3 every reason to believe that we were going to make that  
4 commitment. I had no reason not to believe that.

5 Q Well, how long after May 26th did you come to  
6 understand that you were not going to make the commitment that  
7 you told the Commission by your writing of May 26 that you  
8 were going to make? If that sentence is too difficult to  
9 figure out, I'll try again. When you wrote this document, or  
10 when you signed it on May 26th, you told the Commission that  
11 the tower "is being shipped," and we know that that was not  
12 the case. How long after --

13 A That may have been just a poor choice of words, sir.

14 Q Well, how long after May 26th did you come to  
15 understand that the tower was not going to be shipped?

16 A Within a day or so, because I had already -- I was  
17 actively searching for towers and I had put the word out that  
18 I was looking for something, I needed it right now.

19 Q All right, within a day or so of what? Because  
20 recall that on May 26 this document was signed but it wasn't  
21 mailed until May 30.

22 A I, I can't give you a date but I know it was in that  
23 time frame.

24 Q Did you ever tell the Commission that the statement  
25 that you made here was not accurate?

1           A     Well, it's entirely possible that I may have already  
2 made arrangements to acquire the tower from the other source  
3 before I mailed it but after I prepared it.

4           Q     You just don't remember, though.

5           A     I just don't remember specifically. I know that I,  
6 I made a lot of phone calls during that time trying to put all  
7 of this together.

8           Q     But it would be fair to state that as of May 26th,  
9 you are telling the Commission the tower "is being shipped"  
10 from Missouri?

11          A     That's correct.

12          Q     Mr. Meyers, please refer to page 31 of your  
13 testimony. Mr. Meyers, I'd like you to focus on the second  
14 paragraph of page 31, specifically the sentence, "During much  
15 of the month of May 1988, Meyers was in Chatom, Alabama," et  
16 cetera. Do you see that?

17          A     Yes. Yes.

18          Q     Now, in point of fact you were in Miami during at  
19 least half the month of May, were you not?

20          A     That's quite true.

21          Q     In fact, you were in Miami at least until the 14th  
22 of May.

23          A     That I don't know. I may not have been in Miami,  
24 but I was not in Chatom.

25          Q     Well, let's go back. In -- on May 10, you were

1 certainly in Miami --

2 A Um-hum.

3 Q -- because that's when you drew the check and signed  
4 the lease. On the 14th of Miami [sic] you were surely in --  
5 on the 14th of May, rather --

6 A That's correct.

7 Q -- you were surely in Miami, and --

8 A I, I can only speculate I was in Miami at the  
9 same -- during the interim period as well, but I don't know  
10 that for a fact.

11 Q Well, you do have a daytime -- you had a daytime job  
12 during that period, did you not?

13 A Actually, it was a nighttime job at that time. I  
14 was working midnight to 8.

15 Q All right, but you had a regular job in Miami, and  
16 except for that period when you were in Chatom you were  
17 working your regular job, weren't you?

18 A Yes.

19 Q Now, are you telling us that prior to May 14 you had  
20 no knowledge of the Alabama Native American Broadcasting  
21 Company Petition to Deny?

22 A Absolutely not.

23 Q Although you were in the Miami area --

24 A Um-hum, I had not received anything --

25 Q You would have looked at your mail --

1           A     -- up until that time. I had not received anything  
2 up until that time.

3           Q     When did you first become aware of the May 6, 1988  
4 Petition to Deny?

5           A     I believe it was when I returned from Chatom,  
6 Alabama after making the second trip over there. Now, the  
7 reason why, as I said before, is because when I made the first  
8 trip and returned, I literally gathered up the mail from the  
9 mailbox, threw it into the front office, and cleaned up and  
10 went right back. Left town the same afternoon. I did not  
11 stop to look at material.

12          Q     Before you traveled to Chatom the first time in May  
13 of 1988, it would have been your habit, would it not, to look  
14 at your mail --

15          A     Oh, certainly.

16          Q     -- on a regular basis?

17          A     Certainly, every day, and the first thing I do is  
18 when I get either a bill or something that looks official, I  
19 open it right away. I made a policy a long time ago, I don't  
20 care how good the news is or how bad it is, that's the first  
21 thing I do is I want to find out.

22          Q     So, if you could, please, give us -- let me start  
23 again. The Attachment 62, which we had gone over, bears a  
24 date of May 26th. Were you aware of the Petition to Deny as  
25 of May 26th?

1           A     I don't believe I was.

2           Q     When --

3           A     I, I think maybe within a 24-hour period I became  
4 aware of it but at the time that I made the filing I did  
5 not -- I was not aware that it existed.

6           Q     So, in other words, your preparation of the May 26th  
7 document had absolutely nothing to do with the Petition to  
8 Deny.

9           A     Absolutely nothing. I had a raging fire on my hands  
10 and I was trying to operate the pump. I wasn't looking for  
11 the source of water.

12           MR. SHOOK: Your Honor, would it be acceptable to  
13 take a short break? There are some things that I need to find  
14 but I'm getting pretty close to the end.

15           JUDGE LUTON: How close -- well, we'll certainly  
16 take a break. How close are you to the end? I ask that  
17 question because I don't intend to sit beyond 4 o'clock  
18 unless --

19           MR. SHOOK: Well, Your Honor, if you could give me,  
20 like, 1 or 2 minutes there is something I need to locate, then  
21 that's --

22           JUDGE LUTON: We'll do our best to finish by four?

23           MR. SHOOK: Yes, sir.

24           JUDGE LUTON: All right, fine. Let's recess --

25           (Whereupon, a brief recess was taken.)

1 BY MR. SHOOK:

2 Q Mr. Meyers, I believe when we left off we were going  
3 over the, the time sequence for your having read the Petition  
4 to Deny and having prepared the May 26, 1988 --

5 A Um-hum. Yes, sir.

6 Q -- amendment, if you will, to the extension  
7 application which had been prepared earlier, in March of that  
8 year, and your recollection is that the Petition to Deny had  
9 nothing to do with the May 28 -- May 26 --

10 A No, I, I --

11 Q -- document?

12 A -- don't think it had anything to do with it at all.  
13 I don't think there's any reflection in what we reported  
14 having to do with it.

15 Q Now, if you would, please, look at page 32 --  
16 actually you need to start at the bottom of 31 and go over to  
17 page 32 of your testimony.

18 A Yes, sir.

19 Q It's my understanding from what you're saying here  
20 is that you spoke to someone at the Commission about the need  
21 to file an amendment to --

22 A I, I -- when I found my problems, one of the things  
23 I did was I called the Commission immediately, because I was  
24 without counsel at that time, and requested information as to  
25 what I should do about the problem. I, I believe the staffer

1 that I talked to, I don't know who it was -- I explained to  
2 them briefly what it was that we had run into, and I point  
3 blank said, "Now what do I need to do? What, what do I have  
4 to do to satisfy our situation with the Commission?" and the  
5 recommendation to me was to file an amended 701 application.

6 Q Now it also says here that you called mentioning the  
7 petition, so I take it that by the time you called the  
8 Commission you had read the Petition to Deny. Isn't that what  
9 you're telling us?

10 A It would appear that way but I don't know why  
11 it's -- I put it that way. I had more than one conversation  
12 with the Commission. Somewhere along the line I did have a, a  
13 conversation with a staffer about the petition when we got  
14 that, and it was late, and I called somebody, and got a  
15 staffer again because I was without counsel, and asked them  
16 what to do with the petition, and I may have combined the two  
17 statements here inadvertently.

18 JUDGE LUTON: Or you may have stated here exactly  
19 what you meant to say.

20 WITNESS: Okay, well, I'm sorry, I didn't --

21 JUDGE LUTON: You know, yes --

22 WITNESS: Let me, let me, please let me read it and  
23 I'll try to understand what it was I said.

24 JUDGE LUTON: The question, as I recall it, is at  
25 the time of this conversation with the Commission staffer, you

1 had, had you not, already read the Petition the Deny filed by  
2 Alabama Native, or Native Alabama, or whatever it is? Am I  
3 right, is that the question?

4 MR. SHOOK: Yes, Your Honor, it is.

5 WITNESS: I think I left something out of here that  
6 I had not intended to leave out.

7 BY MR. SHOOK:

8 Q Well, Mr. Meyers, perhaps I can help your memory a  
9 little bit. If you would, please, turn to Mass Media Exhibit  
10 No. 2, page 46. Actually, the document in question begins on  
11 page 45 and carries over to page 46 --

12 A I'm sorry, at which document am I looking?

13 Q Mass Media Exhibit No. 2, pages 45 and 46.

14 A Media Document No. 2, page 45 and 46. I have  
15 photographs on that page. I'm sorry, you're right, and this  
16 was the waiver --

17 Q Okay, first of all --

18 A Am I, am I looking at the right thing, the waiver?

19 Q Yes, sir. Do you recognize the two-page document.

20 A And that's from June 23rd, 1980 -- I'm sorry,  
21 June 27, 1988.

22 Q Right, and you prepared this document, correct?

23 A I prepared that, yes.

24 Q Now, if you would look at the top, the second page,  
25 which is page 46 of the exhibit, you can read it to yourself.

1           A     Yeah, I see what you're saying here.

2           Q     So it is accurate, is it not, that you found the  
3     Petition and then you prepared the -- and then --

4           A     But I, I still, I still don't believe that the, that  
5     the Petition that they filed had anything to do with our  
6     filing, and the simple reason is because their Petition was so  
7     loaded with inaccurate information. They hadn't even located  
8     it at the right site.

9           JUDGE LUTON: That isn't your point at all, is it?

10          MR. SHOOK: No, sir.

11          JUDGE LUTON: Please.

12          WITNESS: I'm sorry, well, then please, please ask  
13     the question and I'll try to answer it correctly.

14          BY MR. SHOOK:

15          Q     Well, what I wanted to establish first was that you  
16     found the Petition, you read the Petition, you then called the  
17     Commission, told them about the Petition, and learned from the  
18     Commission what you should do.

19          A     True. Am I, am I correct though in assuming that  
20     the previous question you had was whether I thought that the  
21     Petition had anything to do with our filing the amended  
22     return, or the amended application?

23          Q     Well --

24          A     Was that not a question --

25          Q     That, that's not something we needed to get into

1 here. I, I believe, and the Judge will instruct us one way or  
2 the other on this, that that's something we're free to argue  
3 about in our Findings and Conclusions. Does -- in the spring  
4 of 1988, did Benchmark own an automobile?

5 A No.

6 Q Did you own an automobile?

7 A Yes.

8 Q Florida tags?

9 A Yes, sir.

10 Q Was there one automobile or more than one?

11 A Do I own one automobile or more than one?

12 Q In May of -- in the spring of 1988?

13 A I think at the time I only owned one car.

14 Q Do you remember what color it was?

15 A Yes, a cream -- no, it was green. Green.

16 Q Green? All right.

17 A A Volkswagen van.

18 Q Did your brother own a car?

19 A He owned a Buick Regal, white.

20 Q Florida tags?

21 A Florida tag, Melbourne, Florida, Brevard County.

22 Q In May of 1988, do you have any recollection of  
23 whether your brother took his car to the Chatom site?

24 A I think he was there every day. I gave him a long  
25 list of things we needed to get done and I put him to work on

1 them.

2 MR. SHOOK: Your Honor, I may be finished.

3 BY MR. SHOOK:

4 Q Mr. Meyers, please turn to Mass Media Exhibit No. 4  
5 beginning on page 89 through 92 -- excuse me, through 93. Is  
6 this a document that you prepared?

7 A Personally.

8 Q In --

9 A On a manual typewriter.

10 Q In December of 1988?

11 A That's correct.

12 MR. SHOOK: Your Honor, I have no further questions.

13 JUDGE LUTON: All right. That will conclude the  
14 taking of the evidence. Mr. Meyers, thank you, you may step  
15 down and have a seat over there, or you can stay here. It  
16 doesn't matter. The evidence is in, the record is closed.  
17 All that remains is for me to have the parties agree on some  
18 dates for the submission of Proposed Findings of Fact and  
19 Conclusions of Law. Mr. Shook knows what that is.  
20 Mr. Meyers, you probably know what it is, too.

21 WITNESS: Yes, I do.

22 JUDGE LUTON: Just in any event, this is where all  
23 the evidence is to be looked at and the parties are to make  
24 their cases based on the evidence, the evidence that is in the  
25 record, however. Not the evidence which was excluded, but the

1 evidence which was admitted. It's an opportunity for the  
2 parties to put their own particular spins on the evidence in  
3 suggesting to me the -- a decision that is compelled, they  
4 believe, by the evidence. It's a time for argument;  
5 hopefully, argument based on the evidence, however, as opposed  
6 to argument indicating general upset. Argument based on the  
7 evidence, it's all appropriate in Proposed Findings. I'll  
8 accept any dates for the submission of Findings that the  
9 parties care to propose.

10 WITNESS: May I make a suggestion --

11 JUDGE LUTON: You certainly may.

12 WITNESS: Following the availability of the  
13 transcript of the deposition, please.

14 JUDGE LUTON: Deposition, you mean, this little chat  
15 here today?

16 WITNESS: I'm sorry, the transcript of the record.

17 JUDGE LUTON: All right, can't we just estimate a  
18 time --

19 MR. SHOOK: Your Honor --

20 JUDGE LUTON: -- the parties would like it to be  
21 available and set a date in light of that possibility?

22 MR. SHOOK: Your Honor, the Bureau is in a difficult  
23 position at this point relative to another matter that is  
24 taking place in terms of testimony and a report that needs to  
25 be prepared. I would ask Your Honor's indulgence that a, a

1 date perhaps sometime in January would be set.

2 JUDGE LUTON: Next year?

3 MR. SHOOK: This is October, Your Honor. That would  
4 be, that would be our request. If it is --

5 JUDGE LUTON: Yes, I understand. How do you feel  
6 about that, Mr. Meyers?

7 WITNESS: I, I was going to suggest if you would  
8 like to sort of shorten it up and we could rule for a summary  
9 decision on your part, if you would want to do that.

10 JUDGE LUTON: That's up to you. However you want --

11 WITNESS: I understand, I understand that it's --  
12 there's a 21-day rule we'd have to request a waiver for.

13 JUDGE LUTON: However you want to, want to try it,  
14 you -- you would like to dispose of the case --

15 WITNESS: It probably would help this poor gentleman  
16 over here. I know what he's going through.

17 JUDGE LUTON: What you might decide to do down the  
18 road by way of seeking procedural relief is no real concern of  
19 mine at this point. I'm only interested in having the parties  
20 agree, if they will, or if they won't. I'll do it without the  
21 agreement. Let's choose some dates for the submission of  
22 Proposed Findings and Reply Findings. Gotten a suggestion  
23 from the Bureau that setting of dates in the month of  
24 January 1995 would suit the Bureau's needs. I just asked you,  
25 Mr. Meyers, how you felt about that. You apparently would

1 prefer some lesser time.

2 WITNESS: Some lesser time?

3 JUDGE LUTON: Um-hum. If that's not correct, say  
4 so.

5 WITNESS: No, it's not correct.

6 JUDGE LUTON: Okay, well --

7 WITNESS: Whatever would help you all. I'm, I'm  
8 open to that point. I, I -- obviously I can use all the time  
9 I can. I have been myself been burdened with a considerable  
10 number of projects which face me when I return to Miami. My  
11 only request is allowing me to see the transcript of the --

12 JUDGE LUTON: Oh, sure.

13 WITNESS: -- record before I proceed.

14 JUDGE LUTON: I expect you'll see it before  
15 January 1995. Give you plenty of time --

16 MR. SHOOK: I can assure you, Mr. Meyers, that I  
17 cannot write Findings without the transcript.

18 JUDGE LUTON: Yeah.

19 WITNESS: I was probably going to have  
20 Mr. Joe Belisle assist me in mine so he needs to see  
21 everything that has been done.

22 MR. SHOOK: May I suggest the --

23 JUDGE LUTON: Two months gets us right up a week or  
24 so before Christmas and nobody does anything during the  
25 Christmas week. What were you going to suggest?

1 MR. SHOOK: I was going to suggest the Friday before  
2 the Martin Luther King, Junior, Holiday.

3 JUDGE LUTON: When is that? Oh, that's January --  
4 that's deep into January, January 20th --

5 MR. SHOOK: Well, it's --

6 JUDGE LUTON: -- or something isn't it?

7 MR. SHOOK: No, Your Honor, I believe that's the  
8 15th or 16th of January.

9 JUDGE LUTON: Deep into January.

10 MR. SHOOK: Middle of January. Whatever the Friday  
11 preceding that holiday is.

12 JUDGE LUTON: Well, I'll tell you.

13 WITNESS: Would you be of a mode to a summary  
14 decision?

15 MR. SHOOK: Well, I believe under the circumstances  
16 you probably would have to make the motion, and then we would  
17 have to decide how to deal with that.

18 JUDGE LUTON: Three months, 90 days, you're talking  
19 here.

20 MR. SHOOK: Your Honor, the only, the only reason,  
21 the only reason I am asking for that time is because of the  
22 other demands that I have to address.

23 JUDGE LUTON: Well --

24 WITNESS: Your Honor?

25 JUDGE LUTON: Yes, sir?

1           WITNESS: May I move for a summary decision, which  
2 may shorten at least our penetration into --

3           JUDGE LUTON: You want to do that now?

4           WITNESS: If you, if you would like to.

5           JUDGE LUTON: I'll turn it down if you do.

6           WITNESS: Okay.

7           JUDGE LUTON: I'd, I'd, I'd have to because I'd like  
8 to see what the evidence shows; I'd like to consider the  
9 evidence with some care. I don't believe that I've heard  
10 enough today, and am able to remember enough, and tie together  
11 enough to make an out-and-out judgement one way or the other  
12 on the case. So I would say that if you want to make a motion  
13 for summary decision, you ought to make it in writing setting  
14 forth your reasons with citations for the evidentiary record,  
15 which give me something to look at when I go to decide the  
16 motion. It will also give the Bureau an opportunity to  
17 respond thoughtfully in writing, also, and with all of that  
18 before me I will then make a definitive judgement on a motion  
19 for a summary decision.

20           WITNESS: Okay.

21           JUDGE LUTON: But to make that motion now knowing  
22 that it's going to be denied wouldn't make much sense, and I  
23 would deny it, I assure you.

24           WITNESS: Okay.

25           JUDGE LUTON: The Friday before -- January 13 is the

1 Friday. January 16 is a Monday. Of course, I don't when the  
2 holiday is. I can't tell from this calendar. Whatever it  
3 is --

4 MR. SHOOK: Generally, Your Honor, such holidays are  
5 celebrated on that Monday, so that would be my understanding.

6 WITNESS: I can confirm that that is true. I have a  
7 calendar that has it so showing up.

8 JUDGE LUTON: All right, 16th is the holiday?

9 WITNESS: Sixteenth will be a holiday.

10 JUDGE LUTON: It will be a holiday. So make your  
11 submissions on the 17th. I'm sorry -- no, what difference  
12 does it make? We're going to require Findings by January 13.

13 MR. SHOOK: That would be acceptable.

14 JUDGE LUTON: It's the Friday.

15 MR. SHOOK: That would be acceptable, Your Honor.

16 JUDGE LUTON: That makes absolutely no difference  
17 when the holiday is here.

18 MR. SHOOK: Well, this was just to place it in time.

19 JUDGE LUTON: I understand. Now I do. Friday,  
20 January 13 for Proposed Findings and Conclusions of Law, and  
21 Monday, January 23rd for Reply Proposed Findings. Don't need  
22 much time for those. They generally don't say much anyway.  
23 All right, as I've indicated, the record is closed; parties  
24 will submit Proposed Findings of Fact and Conclusions of Law  
25 by January 13, 1995, and Reply Proposed Findings by

1 January 23, 1995. Anything else we can deal with at this  
2 time?

3 WITNESS: I believe --

4 JUDGE LUTON: I think not.

5 WITNESS: Thank you.

6 JUDGE LUTON: Thank you all very much for your  
7 participation. We are adjourned.

8 MR. SHOOK: Thank you.

9 (Whereupon, at 4:00 p.m. on October 18, 1994 the  
10 hearing was adjourned.)  
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**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

Benchmark Communications

**Name**

MM 94-47

**Docket No.**

Washington, D.C.

**Place**

October 18, 1994

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 8 through 175, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

10/27/94

**Date**

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